

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re the Application of Roy, et al.)	
)	
Serial No. 10/629,759)	Attorney Docket No. 006943.00107
)	
Filed: July 3, 2003)	Group Art Unit: 1781
)	
For: Prevention of Synthetic Color)	Examiner: Stulii, Vera
Fading in Beverages Using)	
Botanically Derived Color)	Confirmation No. 6813
Stabilizers)	

BRIEF ON APPEAL

Customer Service Window
401 Dulany Street
Alexandria, VA 22314

Sir:

Pursuant to 37 CFR §41.37, Appellant submits this Appeal Brief to the Board of Patent Appeals and Interferences in response to the Final Office Action mailed January 5, 2010. A Notice of Appeal was timely filed on April 29, 2010.

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I. Real Party in Interest

The real party in interest is PepsiCo, Inc., the owner of the entire right, title and interest in and to the subject application.

II. Related Appeals and Interferences

Appellants are unaware of any appeals or interferences related to the subject appeal.

III. Status of the Claims

Claims 1, 3-7, 10-13, 15-21, 24 and 25 are pending and are appealed.

IV. Status of Amendments After Final Rejection

No amendments were filed after final rejection.

V. Summary of Claimed Subject Matter

The present claims are directed to a food coloring-composition, a method of preventing color stable fading in a synthetically colored beverage and a stable colored beverage, particularly using a synthetic color and a color-stabilizing amount of a botanically derived color stabilizer containing a certain chemical structure.

It is well known that natural colors fade and attempts have been made to prevent fading of such natural colors. Since it is believed that synthetic colors are inherently more stable, investigations with respect to color fading have focused on natural colors. Although natural colors fade via an oxidative mechanism, it was discovered that synthetic colors fade via a different mechanism, a reductive chemical mechanism. Moreover, color fading occurs prominently in synthetic colored beverages in the absence of oxygen. Such a low oxygen content is typical of most carbonated and hot-filled beverages. Hence, antioxidants which are widely known and used to stabilize natural colors would not be expected to stabilize synthetic colors in a low oxygen environment. Therefore, a need existed for a method of preventing synthetic color fading in beverages

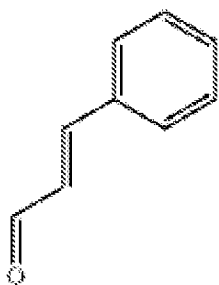
It was discovered by the applicants that botanically derived color stabilizers prevent synthetic color fading in beverages. In particular, botanically-derived stabilizers having a C₆-C₃ phenylpropenoic carbonyl compound are used to prevent

synthetic color fading. In one aspect of the present invention, the botanically-derived color stabilizer is a C₆-C₃ phenylpropenoic carbonyl compound containing (i) unsaturation and (ii) oxidation at a carbon atom. It was found that many of these botanically-derived color fading inhibiting substances are currently approved for food and beverage use. A synthetically colored beverage which contains a botanically derived color stabilizer exhibits substantially lessened or no color fading or loss for a period of at least twice, preferably at least two to five times, as long as a beverage which contains no botanically derived color stabilizer (See paragraph [0029]).

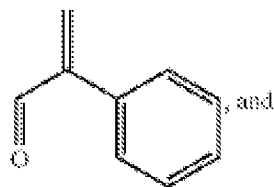
Independent claim 1 is directed to a food coloring composition (paragraphs [0030], [00032]) comprising

(a) a synthetic color selected from the group consisting of Citrus Red No. 2, D&C Red No. 28, D&C Yellow No. 10, FD&C Blue No. 1, FD&C Blue No. 2, FD&C Green No. 3, FD&C Red No. 3, FD&C Red No. 40, FD&C Yellow No. 5, FD&C Yellow No. 6, ferrous gluconate, orange B, ultramarine blue, ultramarine green, ultramarine violet, ultramarine red and combinations thereof; (paragraphs [0023], [00031]) and

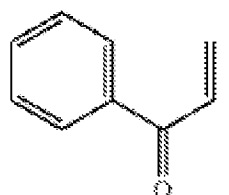
(b) a botanically derived color stabilizer containing a C₆-C₃ phenylpropenoic carbonyl structure therein represented by a formula selected from the group consisting of



(1a)



(1b)



(1c)

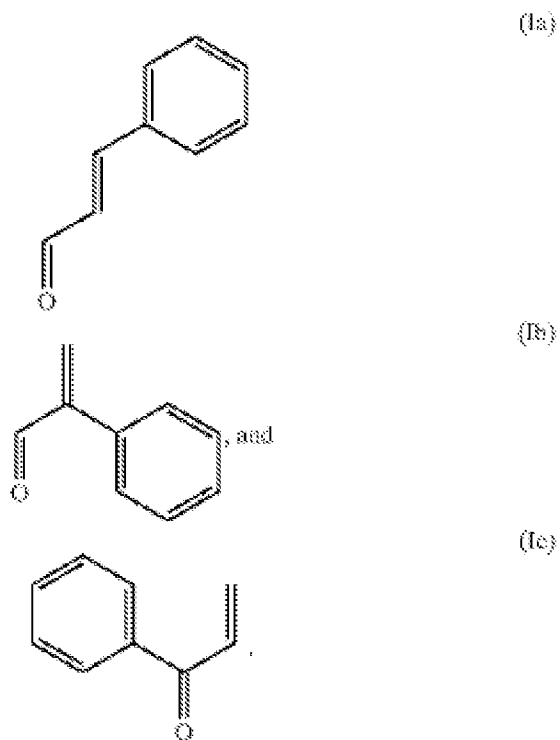
said botanically derived color stabilizer is selected from the group consisting of rosmarinic acid, chlorogenic acid, cichoric acid, caffeic acid, coumarins, coumaric acid, cinnamoyl esters, cinnamic acid, chalcones, flavones, chromones, isoflavones, ferulic acid, sinapic acid, caftaric acid, eichloric acid, echinacoside and combinations thereof (paragraphs [0024], [00035]).

Independent claim 20 is directed to a method of preventing color fading in a synthetically colored beverage (paragraphs [0054] – [0056]) comprising the step of including in said beverage

- (a) a synthetic color selected from the group consisting of Citrus Red No. 2, D&C Red No. 28, D&C Yellow No. 10, FD&C Blue No. 1,

FD&C Blue No. 2, FD&C Green No. 3, FD&C Red No. 3, FD&C Red No. 40, FD&C Yellow No. 5, FD&C Yellow No. 6, ferrous gluconate, orange B, ultramarine blue, ultramarine green, ultramarine violet, ultramarine red and combinations thereof (paragraphs [0023], [0031]); and

(b) a color stabilizing amount (paragraph [0057]) of a botanically derived color stabilizer containing a C₆-C₃ phenylpropenoic carbonyl structure therein represented by a formula selected from the group consisting of



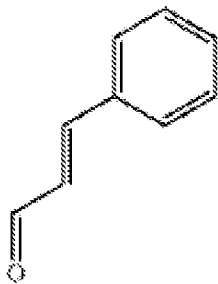
said botanically derived color stabilizer is selected from the group consisting of rosmarinic acid, chlorogenic acid, cichoric acid, caffeic acid, coumarins,

courmaric acid, cinnamoyl esters, cinnamic acid, chalcones, flavones, chromones, isoflavones, ferulic acid, sinapic acid, caftaric acid, eichloric acid, echinacoside and combinations thereof (paragraphs [0024], [0035]).

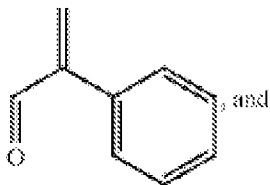
Independent claim 21 is directed to a stable colored beverage (paragraph [0059]) comprising,

(a) a synthetic color selected from the group consisting of Citrus Red No. 2, D&C Red No. 28, D&C Yellow No. 10, FD&C Blue No. 1, FD&C Blue No. 2, FD&C Green No. 3, FD&C Red No. 3, FD&C Red No. 40, FD&C Yellow No. 5, FD&C Yellow No. 6, ferrous gluconate, orange B, ultramarine blue, ultramarine green, ultramarine violet, ultramarine red and combinations thereof (paragraphs [0023], [0031]); and

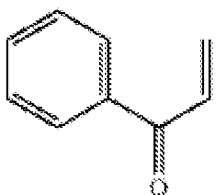
(b) a color stabilizing amount of a botanically derived color stabilizer containing a C₆-C₃ phenylpropenoic carbonyl structure therein represented by a formula selected from the group consisting of



(1a)



(1b)



(1c)

said botanically derived color stabilizer is selected from the group consisting of rosmarinic acid, chlorogenic acid, cichoric acid, caffeic acid, coumarins, coumaric acid, cinnamoyl esters, cinnamic acid, chalcones, flavones, chromones, isoflavones, ferulic acid, sinapic acid, caftaric acid, eichloric acid, echinacoside and combinations thereof (paragraphs [0024], [0035]).

VI. Grounds of Rejection to be Reviewed on Appeal

Claims 1, 3-7, 10-11, 15-17, 19-21, 24-25 stand rejected under 35 USC §103(a) as being unpatentable over Akihiko et al (JP 2001323263) (“Akihiko”).

Claims 12-13 stand rejected under 35 USC §103(a) as being unpatentable over Akihiko et al (JP 2001323263) in view of COFFEE (COFFEE: RELATED BEVERAGES).

Claim 18 stands rejected under 35 USC §103(a) as being unpatentable over Akihiko et al (JP 2001323263) in view of Taguchi et al (JP 2002138024).

VII. Argument

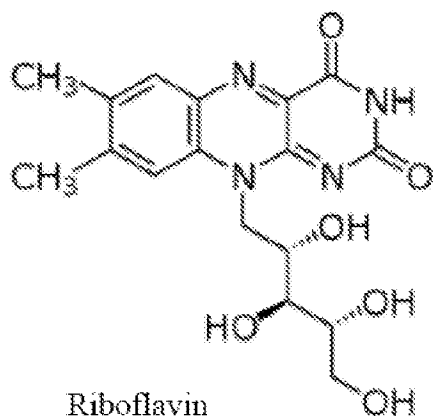
A. Claims 1, 3-7, 10-11, 15-17, 19-21 and 24-25 of the instant application are patentable over Akihiko

Akihiko does not teach or suggest claims 1, 3-7, 10-11, 15-17, 19-21 and 24-25 of the instant application. Akihiko is directed to preventing color fading of *natural* color using an extract of coffee beans. Moreover, Akihiko discloses in paragraph [0006] of the translation, that “natural coloring matter has various structures and it is of infinite variety by heat, light, etc. though what kind device to fade and whether it discolors. Therefore, since only the antioxidizing effectiveness cannot necessarily explain fading prevention of natural coloring, there is no fading inhibitor generally applicable to any coloring matter.” As such, Akihiko teaches that natural colors have a variety of unique structures and fade by different mechanisms, thus no one material is applicable as a fading inhibitor. Akihiko fails to disclose or render obvious the use of botanically-derived color stabilizers to inhibit the fading of synthetic colors as described in the instant application.

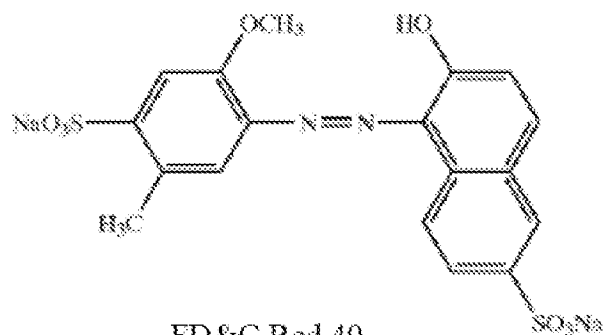
As stated in the Summary above, the instant application teaches that natural colors fade by an *oxidative* mechanism whereas synthetic colors fade by a *reductive* chemical mechanism. Moreover, the specification of the instant application notes that “it has been found that color fading occurs more prominently in synthetic colored beverages in the absence of oxygen, i.e., < 3 ppm oxygen. Such a low oxygen content is typical of most carbonated and hot-filled beverages.

Hence, anti-oxidants would not be expected to stabilize synthetic colors in a low oxygen environment.” (See paragraph [0018]). Additionally, because synthetic color fading is worsened in low oxygen environments, i.e., less than 3 ppm, oxygen, it would be counterintuitive to use an anti-oxidant to combat synthetic color fading. (See paragraph [0028]).

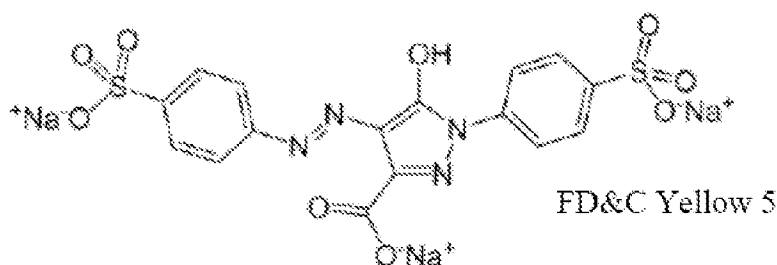
Independent claims 1, 20 and 21 are directed stable color compositions comprising a synthetic color, a botanically derived color stabilizer containing a C₆-C₃ phenylpropenoic carbonyl structure. Even assuming *arguendo*, that the riboflavin taught in Akihiko is a synthetic compound, the riboflavin is structurally and significantly different than the synthetic colors claimed in the instant application, as is readily apparent from the chemical structures identified below:



Riboflavin



FD&C Red 40



FD&C Yellow 5

As such, there would have been simply no reason from the disclosure of Akihiko to suggest that the claimed botanically derived color stabilizers could be used to effectively inhibit fading of the claimed synthetic colors based solely on the that synthetic colors and riboflavin function as colors.

An obviousness rejection under 35 USC §103 is appropriate only when the differences between the claimed invention and the prior art “are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art.” 35 USC §103(a). The ultimate determination of whether an invention would have been obvious is a legal conclusion based on underlying factual inquiries including: (1) the scope and

content of the prior art; (2) the level of ordinary skill in the prior art; (3) the differences between the claimed invention and the prior art; and (4) any objective evidence of non-obviousness. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966).

The USPTO has issued guidelines to its Examiners dealing with obviousness rejections. MPEP §2141. The guidelines point out that the Supreme Court opinion in *KSR* (*KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1734, 82 USPQ2d 1385, 1391 (2007)) reaffirmed the analytical framework for obviousness that was presented in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966). In that connection, PTO personnel serve as factfinders with respect to the following:

1. Determining the scope and content of the prior art;
2. Ascertaining the difference between the claimed invention and the prior art; and
3. Resolving the level of ordinary skill in the art.

When making an obviousness rejection, the notice states, examiners must ensure that the written record includes not only findings on those points, but also explicit findings as to how a person of ordinary skill would have understood prior art teachings, or what a person of ordinary skill would have known or could have done. “Factual findings made by Office personnel are the necessary underpinnings to establish obviousness,” according to the PTO. This is important, the notice

added, regardless of whether the source of that knowledge and ability was documentary prior art, general knowledge in the art, or common sense.

The clear articulation of the reason(s) why the claimed invention would have been obvious is key to supporting any rejection under 35 USC §103, according to the notice. Under *KSR*, it explained, the analysis supporting an obviousness rejection should be made explicit. *KSR* said such rejections “cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness,” quoting *In re Kahn*, 441 F.3d 977, 78 USPQ2d 1329 (Fed. Cir. 2006).

The rejection over the instant claims cannot be sustained, as the Office Action fails to demonstrate or articulate how Akihiko renders the claims obvious. In particular, the Final Office Action mailed January 5, 2010 states that: “. . . as disclosed by applicant and understood in the art, each of the originally claimed synthetic colors would be a functional equivalent known in the art,” (January 5, 2010 Final Office Action, p. 3) and further that:

[s]ince color additives as recited and taught by Akihiko et al are functional equivalents known for the same purpose, it would have been obvious to substitute one for another. It would also have been obvious to substitute one for another based on expectation of similar functions and similar positive results.

(January 5, 2010 Final Office Action, p. 4).

The argument set forth in the final Office Action that the “color additives as recited and taught by Akihiko et al are functional equivalents known for the same purpose . . .” is misplaced. As noted in Applicant’s Response dated March 25, 2010, the structures of natural colors and the claimed synthetic colors are far from being isomers or homologs and therefore are not sufficiently similar to be suggestive of each other with respect to solving the problem of color fading. The Akihiko disclosure fails to teach or suggest that the recited botanically derived color stabilizers could be effectively employed to inhibit fading of the synthetic colors recited in the instant application. For the reasons set forth above, independent claims 1, 20 and 21 are patentable over Akihiko.

Further, because claims 10-11, 15-17 and 19 depend from claim 1 and claims 3-7, 24 and 25 depend from claim 21, these dependent claims are patentable over Akihiko for the same reasons listed with respect to claims 1, 20 and 21 and for the additional features recited therein.

Applicants therefore submit that Akihiko does not teach or suggest the instant claims.

B. Claims 12-13 are patentable over Akihiko in view of COFFEE

COFFEE fails to remedy the defects in Akihiko and the combination of the Akihiko and COFFEE references fails to render obvious claims 12-13 of the instant application. COFFEE teaches the use of these plants as substitutes for

coffee with respect to its *flavor* and *aroma* (see COFFEE, pp. 12, 16). Further, COFFEE does not disclose the structure and properties of these ingredients in relation to coffee, or substitutability of these ingredients for coffee for any purpose other than flavor. Further, simply because roasted dandelion root and roasted hawthorn may be used to make a beverage for drinking as a coffee substitute, there is absolutely no reason to expect that extracts of dandelion root or hawthorn would provide active ingredients equivalent to an extract of a green coffee bean for the purpose of inhibiting the fading of synthetic colors as set forth in claims 12-13 of the instant application.

Moreover, the hindsight reconstruction admonished by the Supreme Court in *KSR v. Teleflex* (*KSR v. Teleflex, Inc.*, 127 S.Ct. 1727, 1742-43 (2007)) is used in the obviousness argument set forth in the July 29, 2009 Non-Final Office Action with respect to claims 12-13 of the instant invention. The July 9, 2009 Office Action relies upon Applicant's own disclosure for the obviousness rejection of claims 12-13. More specifically, the Office Action states that "[o]n pages 6-7 of the of Specification Applicants state that 'In other preferred embodiments, the C6-C3 phenylpropenoic carbonyl compound is selected from cinnamoyl esters, coumarins, chalcones, the form of an extract of a botanical selected from horse chestnut extract, dandelion extract, eucalyptus extract, stringybark extract, saw palmetto extract, honeysuckle extract, hawthorn extract, noni fruit extract, red

clover extract, orange extract, buckwheat extract, chamomile extract and combinations thereof.’ [0021]. . . Since COFFEE discloses dandelion root extract and hawthorn extract, it also meets limitations of claims 12 and 13 according to Applicants’ disclosure.” It appears that the Office Action is contending that the *Applicant’s discovery* that C₆-C₃ phenylpropenoic carbonyl compounds inhibit fading of synthetic colors, in combination with the disclosures of Akihiko and COFFEE render claims 12 and 13 obvious because dandelion extract, hawthorn and other botanical extracts all comprise various C₆-C₃ phenylpropenoic structures. Without the specification of the instant application, which is the only disclosure that the C₆-C₃ phenylpropenoic carbonyl structure is important to inhibit the fading of synthetic colors, there would be no way to arrive at the conclusion that this discovery is taught by Akihiko in view of COFFEE. For the reasons identified above, claims 12-13 are patentable over these references.

C. Claim 18 is patentable over Akihiko in view of Taguchi

As stated in the Summary above, Claim 18 is rejected under 35 USC §103(a) as being unpatentable over Akihiko in view of Taguchi et al. (“Taguchi”). However, the Office Action mischaracterizes the disclosure and teachings of Taguchi with respect to the principal for which it is cited. In particular, the Office Action states that “[s]ince Akihiko et al disclose pigment fading inhibitor comprising coffee bean extract as an active ingredient, and since Taguchi et al

discloses coffee extract or chestnut extract as part of a stable dyeing composition, one of ordinary skill in the art would have been motivated to substitute coffee extract with chestnut extract, since Taguchi et al discloses that coffee and chestnut extracts are functional equivalents in the stable dyeing composition comprising various coloring botanical extracts” January 5, 2010 Final Office Action, pp. 2-3).

Taguchi fails to remedy the defects of Akihiko and disclose, teach or suggest claim 18 of the instant application. Taguchi teaches a hair dye composition including “staining components obtained from powdered extract of root, stalk, flower, fruit or seed of plants, such as Rubia akane, turmeric, sappanwood, cork tree, Sophora japonica, cochineal, chestnut, onion and/or coffee (Taguchi translation, p. 2). In addition, the hair dye composition of Taguchi includes a metallic substance; a mordant including an aqueous solution of primary and secondary treating agents containing a reducer and alkali chemicals, and an oxidizing agent. Accordingly, Taguchi discloses that the botanical extracts are the *dye colors* themselves, and not color fading inhibitors.

Claim 18 depends from claim 1. Non-obviousness and patentability with respect to claim 1 over Akihiko is discussed in detail above. In sum, Akihiko fails to disclose a botanically-derived fading inhibitor for synthetic colors. Further, Taguchi is completely silent regarding inhibiting the fading of synthetic colors and provides no explanation of what components of the hair dye composition result in

the “excellent time-dependent stability, durability, color-fastness, quality and adhesivity on applied hairs.” (Taguchi translation, p. 3). Since Taguchi fails to provide guidance regarding inhibiting the fading of synthetic colors, it cannot and does not remedy the deficiencies of Akihiko with respect to independent claim 1 (as explained in detail above). For these reasons, claim 18 is patentable over Akihiko in view of Taguchi.

VIII. CONCLUSION

For reasons argued above, the Final Office Action has failed to set forth a proper *prima facie* case of obviousness of claims 1, 3-7, 10-13, 15-21 and 24-25. Reversal of the obviousness rejections and allowance of the subject application are respectfully requested.

Respectfully submitted,
BANNER & WITCOFF, LTD.

Date: June 29, 2010

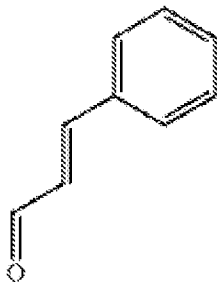
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CLAIMS APPENDIX

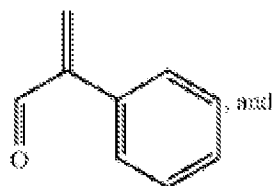
1. A food coloring composition comprising

(a) a synthetic color selected from the group consisting of Citrus Red No. 2, D&C Red No. 28, D&C Yellow No. 10, FD&C Blue No. 1, FD&C Blue No. 2, FD&C Green No. 3, FD&C Red No. 3, FD&C Red No. 40, FD&C Yellow No. 5, FD&C Yellow No. 6, ferrous gluconate, orange B, ultramarine blue, ultramarine green, ultramarine violet, ultramarine red and combinations thereof; and

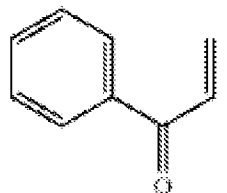
(b) a botanically derived color stabilizer containing a C₆-C₃ phenylpropenoic carbonyl structure therein represented by a formula selected from the group consisting of



(Ia)



(Ib)



(Ic)

said botanically derived color stabilizer is selected from the group consisting of rosmarinic acid, chlorogenic acid, cichoric acid, caffeic acid, coumarins,

coumaric acid, cinnamoyl esters, cinnamic acid, chalcones, flavones, chromones, isoflavones, ferulic acid, sinapic acid, caftaric acid, eichloric acid, echinacoside and combinations thereof.

2. (Canceled)

3. The stable colored beverage according to claim 21, wherein the synthetic color is present in an amount ranging from about 0.1 ppm to about 50 ppm.

4. The stable colored beverage according to claim 3, wherein the synthetic color is present in an amount ranging from about 1 ppm to about 10 ppm.

5. The stable colored beverage according to claim 21, wherein the botanically derived color stabilizer is present in an amount ranging from about 10 to about 500 ppm.

6. The stable colored beverage according to claim 5, wherein the botanically derived color stabilizer is present in an amount ranging from about 50 ppm to about 300 ppm.

7. The stable colored beverage according to claim 6, wherein the botanically derived color stabilizer is present in an amount ranging from about 100ppm to about 200 ppm.

8-9. (Canceled)

10. The food coloring composition according to claim 1, wherein the cinnamoyl ester is selected from the group consisting of cinnamyl formate, cinnamyl acetate, ethyl cinnamate, cinnamyl propionate, cinnamyl alpha-toluate, cinnamyl 2-amino benzoate, cinnamyl anthranilate, cinnamyl benzoate, cinnamyl

beta-phenyl acrylate, cinnamyl butyrate, cinnamyl cinnamate, cinnamyl isobutyrate, cinnamyl isovalerate, cinnamyl methyl ketone, cinnamyl ortho-amino benzoate, cinnamyl phenyl acetate, cinnamyl 3-phenyl propenoate and combinations thereof.

11. The food coloring composition according to claim 1, wherein the coumarin is selected from the group consisting of coumarin, coumestrol, dalbergin, daphnetin, esculetin, citropten, noralbergin, umbelliferone, scopoletin, xanthotoxol, psoralen, bergapten, fraxetin and combinations thereof.

12. The food coloring composition according to claim 1, wherein the chalcone is selected from the group consisting of chalcone, polyhydroxychalcones, butein, phloridzin, echinatin, marein, isoliquiritigenin, phloretin and combinations thereof.

13. The food coloring composition according to claim 1, wherein the flavone is selected from the group consisting of rhoifolin, diosmin, apiin, apigenin, myricetin, kaempferol, luteolin, morin, neodiosmin, quercetin, rutin, balcalein, cupressuflavone, datiscetin, diosmetin, fisetin, galangin, gossypetin, geraldol, hinokiflavone, scutellarein, flavonol, primuletin, pratol, robinetin, quercetagenin, (OH)₄ flavone, tangeritin, sinensetin, fortunelin, kampferide, chrysoeriol, isorhamnetin, vitexin and combinations thereof.

14. (Canceled)

15. The food coloring composition according to claim 1, wherein the isoflavone is selected from the group consisting of daidzin, daidzein, biochamin A, prunetin, genistin, glycitein, glycitin, genistein, 6,7,4'-tri(OH)isoflavone, 7,3',4'-tri(OH)isoflavone and combinations thereof.

16. The food coloring composition according to claim 1, wherein the botanically derived color stabilizer is supplied by an extract of a botanical.

17. The food coloring composition according to claim 16, wherein the extract is selected from the group consisting of rosemary extract, green coffee bean extract, blueberry extract, rhododendron extract, sunflower kernel extract, chickory leaf extract, purple coneflower extract, lettuce extract and combinations thereof.

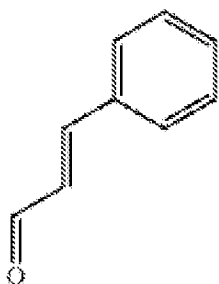
18. The food coloring composition according to claim 16, wherein the extract is selected from the group consisting of horse chestnut extract, eucalyptus extract, stringybark extract, saw palmetto extract, honeysuckle extract, noni fruit extract, red clover extract, orange extract, buckwheat extract, chamomile extract and combinations thereof.

19. The food coloring composition according to claim 1 further comprising a non-aryl enoic carbonyl compound selected from the group consisting of sorbic acid, aconitic acid, fumaric acid, maleic acid and combinations thereof.

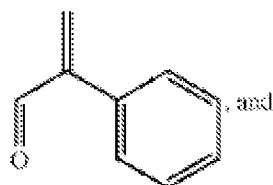
20. A method of preventing color fading in a synthetically colored beverage comprising the step of including in said beverage

(a) a synthetic color selected from the group consisting of Citrus Red No. 2, D&C Red No. 28, D&C Yellow No. 10, FD&C Blue No. 1, FD&C Blue No. 2, FD&C Green No. 3, FD&C Red No. 3, FD&C Red No. 40, FD&C Yellow No. 5, FD&C Yellow No. 6, ferrous gluconate, orange B, ultramarine blue, ultramarine green, ultramarine violet, ultramarine red and combinations thereof; and

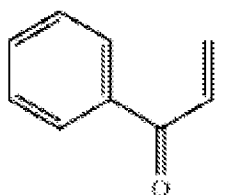
(b) a color stabilizing amount of a botanically derived color stabilizer containing a C₆-C₃ phenylpropenoic carbonyl structure therein represented by a formula selected from the group consisting of



(1a)



(1b)



(1c)

said botanically derived color stabilizer is selected from the group consisting of rosmarinic acid, chlorogenic acid, cichoric acid, caffeic acid, coumarins, coumaric acid, cinnamoyl esters, cinnamic acid, chalcones, flavones, chromones, isoflavones, ferulic acid, sinapic acid, caftaric acid, eichloric acid, echinacoside and combinations thereof.

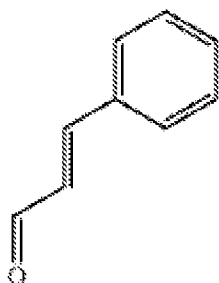
21. A stable colored beverage comprising,

(a) a synthetic color selected from the group consisting of Citrus Red No. 2, D&C Red No. 28, D&C Yellow No. 10, FD&C Blue No. 1, FD&C Blue No. 2, FD&C Green No. 3, FD&C Red No. 3, FD&C Red No. 40, FD&C Yellow No. 5, FD&C Yellow No. 6, ferrous gluconate,

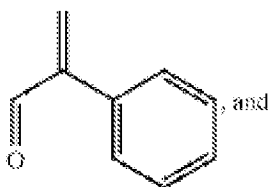
orange B, ultramarine blue, ultramarine green, ultramarine violet, ultramarine red and combinations thereof; and

(b) a color stabilizing amount of a botanically derived color stabilizer containing a C₆-C₃ phenylpropenoic carbonyl structure therein represented by a formula selected from the group consisting of

(1a)

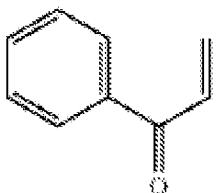


(1b)



and

(1c)



said botanically derived color stabilizer is selected from the group consisting of rosmarinic acid, chlorogenic acid, cichoric acid, caffeic acid, coumarins, coumaric acid, cinnamoyl esters, cinnamic acid, chalcones, flavones, chromones, isoflavones, ferulic acid, sinapic acid, caftaric acid, eichloric acid, echinacoside and combinations thereof.

22-23. Canceled

24. The stable colored beverage according to claim 21, wherein the stable colored beverage is a lemonade, the synthetic color is FD&C Yellow No. 5, and

the botanically derived color stabilizer is chlorogenic acid from green coffee bean extract.

25. The stable colored beverage according to claim 21, wherein the stable colored beverage is a lemonade, the synthetic color is FD&C Yellow No. 6, and the botanically derived color stabilizer is chlorogenic acid from green coffee bean extract.

EVIDENCE APPENDIX

There is no additional evidence presented.

RELATED PROCEEDINGS APPENDIX

There are no related proceedings and therefore no final decisions have been rendered in related proceedings.